

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR 04-64

Plaintiff,

OPINION AND ORDER

v.

JUAN DAVID MUNOZ-CRUZ,

Defendant.

KARIN J. IMMERGUT  
United States Attorney  
FRANK NOONAN  
United States Attorney  
1000 S.W. Third Avenue, Suite 600  
Portland, OR 97204

Attorneys for Plaintiff

STEVEN T. WAX  
Federal Public Defender  
STEPHEN R. SADY  
Chief Deputy  
Federal Public Defender  
101 S.W. Main Street, Suite 1700  
Portland, OR 97204

Attorneys for Defendant

MARSH, Judge.

On February 16, 2006, the United States Court of Appeals for the Ninth Circuit remanded this case for a determination under United States v. Ameline, 409 F.3d 1073 (9<sup>th</sup> Cir. 2005)(en banc), whether I would have imposed a materially different sentence had the Sentencing Guidelines been advisory at the time of sentencing. See also United States v. Moreno-Hernandez, 419 F.3d 906 (9<sup>th</sup> Cir. 2005).

On remand, I have carefully considered the record in light of the now-advisory Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a). I remain satisfied that a sentence of 57 months was appropriate. I find that I would not have exercised discretion to impose a materially different sentence if I had been free to do so when I first sentenced defendant. Accordingly, I find it is not necessary to conduct further sentencing proceedings or to amend the original Judgment of Conviction in any manner.

IT IS SO ORDERED.

DATED this 19 day of April, 2006.

/s/ Malcolm F. Marsh  
Malcolm F. Marsh  
United States District Judge